

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM OCTOBER 1, 1973
THROUGH DECEMBER 31, 1973

WILLIAM J. BAXLEY, Attorney General

VOLUME 153

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Q U A R T E R L Y R E P O R T

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From October 1, 1973

Through December 31, 1973

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1973, through December 31, 1973, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. This section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY
Attorney General

GEORGE L. BECK
Deputy Attorney General

E. RAY ACTON
Executive Assistant

WALTER S. TURNER
Chief Assistant Attorney General

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James R. Payne

OPINIONS

I N D E X

**QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE
PERIOD FROM OCTOBER 1, 1973 THROUGH DECEMBER 31, 1973**

— C —

CHAMBERS COUNTY:

Seat of County Government cannot be moved without
referendum

COLLEGES:

University may obtain liability insurance for its motor
vehicles

CONSTITUTION:

Chambers County Commission may not choose to hold its weekly
meetings away from the county seat

COUNTIES:

A county may authorize funds to provide data processing serv-
ices for county tax assessor and tax collector, with provision
that all labor costs must be borne by tax assessor's and
tax collector's offices

County governing body has authority to enter upon private
property to eliminate or remove an unauthorized dump

County Commission may not remove site of commission meet-
ings from county seat of government

— I —

INSURANCE:

University of Alabama may obtain liability insurance for its
motor vehicles

— L —

LICENSES:

Where ordinance provides, a public utility owned and operated
by a municipality may be subject to privilege license taxes

— M —

MUNICIPALITIES:

Where an ordinance provides, a public utility owned and oper-
ated by a municipality may be subject to privilege license
taxes

— R —

RUSSELL COUNTY:

Russell County may authorize payment to provide data processing services for county tax assessor and tax collector, but all labor charges must be paid by tax assessor's and tax collector's offices

— S —

SOLID WASTE DISPOSAL ACT:

A county governing body has authority to enter upon private property to eliminate or remove an unauthorized dump

— T —

TAX ASSESSOR AND TAX COLLECTOR:

A county may authorize payment to provide data processing services for county tax assessor and tax collector, provided all labor costs are stated separately and paid for by the tax assessor and tax collector

TAXES:

A public utility owned and operated by a municipality may be subject to privilege license taxes, where an ordinance expressly so provides

— U —

UNIVERSITY OF ALABAMA:

The Board of Trustees of the University of Alabama may obtain and pay premiums for liability insurance on its motor vehicles

October 4, 1973

Honorable J. Rufus Bealle
Executive Secretary of the Board of Trustees
University of Alabama
University, Alabama 35486

Colleges — Universities — University of Alabama — Insurance — Motor Vehicles.

The Board of Trustees of the University of Alabama may obtain and pay premiums for liability insurance on its motor vehicles for policies containing the substantial provisions as outlined in Quarterly Report of Attorney General, Volume 86, page 7, and the opinion to General William M. Fondren, Commissioner, Board of Corrections, State of Alabama, dated October 7, 1970.

Opinion by Assistant Attorney General Madison.

Dear Mr. Bealle:

I have your letter of September 13, 1973 which is as follows:

"On March 26, 1950, the Attorney General of Alabama rendered an opinion to the President of The University of Alabama stating that the funds of The University of Alabama may not be expended to pay premiums on liability insurance. That opinion appears in Quarterly Report of The Attorney General of Alabama, vol. 58, p. 113. However, in separate opinions, both dated November 12, 1971 to the Executive Director of the Alabama Association of School Boards and the Superintendent of the Tuscaloosa County School System, your office stated that the county and city Boards of Education may purchase with public funds liability insurance on all vehicles owned or operated by them and for the protection of school board members from errors or acts of omission and additionally an omnibus clause or extended coverage protecting their servants, agents and employees using the vehicles with permission; these opinions appear in Quarterly Report of The Attorney General of Alabama, Vol. 145, p. 33 and 34, respectively.

"The Board of Trustees of The University of Alabama owns, maintains, and operates, through its officials, employees and officers, a large fleet of automobiles and other motor operated vehicles involved in transportation, maintenance and general operations; the operation of these vehicles has given rise to claims of personal and property damage allegedly based upon the negligence of the officials or employee operating the vehicle. "Is it not true that your recent opinions of November 12, 1971, as aforesaid, have effectively overruled the earlier opinion so that The Board of Trustees of The University of Alabama may now authorize the purchase, from state appropriated funds, of a general automobile liability insurance policy in behalf of

and for The Board of Trustees of The University of Alabama, a body corporate, with extended coverage to its trustees, officials, servants and employees operating its vehicles with permission?"

The State of Alabama and its immediate agencies are immune from suit under the provisions of Section 14, Article 1, Constitution of 1901.

The county and city boards of education are not strictly governmental agencies and in certain cases are subject to suit. **Ex Parte Board of School Com'rs**, 230 Ala. 304, 161 So. 108. So, the opinions of this office relating to liability insurance for these boards of education may not be considered as advisory opinions in point as related to such insurance for the motor vehicles owned and maintained by the Board of Trustees of the University of Alabama. It is only where a city is engaged in the performance of a governmental function that it is not liable for the negligent or wrongful performance of its governmental functions. **Densmore v. City of Birmingham**, 223 Ala. 210, 135 So. 320. It is liable for injuries caused by the wrongful or negligent performance of its corporate or ministerial duties. **City of Anniston v. Hillman**, 220 Ala. 505, 126 So. 169.

These observations are deemed necessary in explanation of some of our opinions relating to liability insurance for motor vehicle owners and operators such as cities and boards of education.

In Quarterly Report of Attorney General, Volume 58, page 113, this office ruled that the Board of Trustees of the University of Alabama may not expend funds for liability insurance on its fleet of automobiles. The above opinion was based upon the premise that no liability could be fastened upon the Board of Trustees, hence the expenditure of public funds for liability insurance would gain nothing in return for the money expended.

I must now reexamine that opinion in the light of modern day provisions contained in most liability policies and the subsequent opinions of this office.

Under most liability policies the provisions cover not only the named insured but also the agents, servants, and employees and others using the motor vehicle with the permission of the named insured. The insurer agrees to defend claims or suits against these persons as well as the named insured whether groundless or not. They also in many cases provide for immediate medical and surgical services at the expense of the insurer to those accidentally injured by the operation or use of the motor vehicle without regard to liability on insured part. Some policies provide for payment of premiums by insurer on bonds to release attachments and on appeal bonds where necessary. In some cases the policies may provide for direct suit against the insurance company for damages sustained.

It seems to me that such insurance as above outlined in its material aspects will result in a better and more satisfied class of motor vehicle employee operators.

It also seems pertinent to observe that accident claims before the Board of Adjustment which are allowed and charged to the University would be substantially reduced by such liability insurance, thereby saving to some extent the expenditure of funds of the University.

In an opinion to General William M. Fondren, Commissioner of the Board of Corrections, State of Alabama, dated October 7, 1970, this office ruled that the Board of Corrections was authorized to purchase and carry liability insurance for the benefit of its agents who operated the motor vehicles there involved.

I am sending you a copy of the above opinion and the one reported in Quarterly Report of Attorney General, Volume 68, page 7, for your careful study and consideration. If the Board of Trustees of the University of Alabama can secure liability insurance for its motor vehicles of the substantial type as outlined in the **Fondren** opinion and the one in Volume 86, *supra*, it is my opinion that it may expend its funds in payment of the premiums on such insurance.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

October 5, 1973

Honorable Charles E. Robinson
District Attorney
Thirtieth Judicial Circuit
P. O. Box 404
Pell City, Alabama 35125

Counties — Solid Waste — Unauthorized Dumps.

A county governing body has authority to enter upon private property to eliminate or remove an unauthorized dump.

Opinion by Assistant Attorney General Kendrick.

Dear Mr. Robinson:

This is in response to your letter of September 28, 1973 requesting an opinion from this office as follows:

"At Spring Session of the Grand Jury here in St. Clair County, the Grand Jury recommended to the Court of County Commissioners that the County Commissioners take County road equipment and clean up the illegal and unauthorized garbage dumping places here in St. Clair County. Most of these dumping places begin on the right of way of public roads and extend for a short distance onto private property adjoining the right of way. As you know, a lot of this illegal dumping has been

brought about by the solid waste act which has now become law. It was the Grand Jury's thinking that if these unsightly dumping places were cleaned up, that perhaps the people who are now dumping at these places would take more pride and our County would be made more beautiful.

"In response to this Grand Jury recommendation, the County Commissioners advised that there was no authority under the law for them to go on private property and clean these garbage dumps up. Would you please advise so that I might advise the Grand Jury and County Commissioners, whether or not the Court of County Commissioners in St. Clair County would be authorized under the law to begin cleaning these dumps on the right of way of the public roads and to go further and clean the dumps that have extended to the private property adjoining the right of way.

"The Grand Jury of this County is meeting on October 10, 1973 and if at all possible, would like to have you reply to this inquiry by this time."

Subsection (b) of Section 3 of the Solid Waste Act (Act No. 771, Regular Session 1969) provides as follows:

"UNAUTHORIZED DUMPS: The formation of unauthorized dumps is hereby declared to be a public nuisance per se, menacing public health and unlawful, and shall be abated by authority granted under Title 22, Section 75 and 76 of the Code of Alabama, 1940, and such existing dumps shall be eliminated by removal, or on-site burial within the feasible time limitations as specified under Section 4 of this Act."

It is the opinion of this office that all county and municipal governing bodies not only have the authority but are required under the above-cited statute to eliminate by removal or on-site burial any unauthorized dump regardless of whether it is on public or private property.

If we may be of further assistance, please advise.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

October 16, 1973

Honorable James A. Avary

Attorney for Chambers County

P. O. Drawer 409

Lanett, Alabama 36863

Constitution of Alabama 1901, Section 41.

Seat of county government cannot be moved without referendum.

Title 12, Section 12(1), Code of Alabama 1940, Recom-piled 1958.

Opinion by Assistant Attorney General Lurie.

Dear Mr. Avary:

Your request for an opinion dated September 27, 1973, is as follows:

"I am county attorney for Chambers County, and I would appreciate your opinion whether the Chambers County Commission can hold its regular weekly meetings within the city limits of Lanett, which is within Chambers County, rather than at the court house in LaFayette, the county seat.

"For your information, I enclose a copy of the Bill which establishes the commission form of county government in Chambers County.

"When you have had a chance to consider this matter, I would appreciate your calling me by telephone in hopes that I can be of assistance to you."

It is the opinion of this office that the Chambers County Commission must hold its regular weekly meetings at the county seat, that is, in LaFayette.

The provisions of Section 41 of the Constitution of Alabama of 1901 prohibit the removal of the county site without the vote of the people.

The establishment of the county seat was for the purpose of providing a site for the people in the county to attend the meetings of the county governing body and it was for this reason that the constitutional provision was adopted. Changing meeting place would work a hardship on those seeking to attend as well as on the members of the governing body. The business of the county governing body is the business of the people of the county and should be conducted at the site selected as the county seat which, in this case, is LaFayette.

Title 12, Section 12(1), Code of Alabama 1940, Recompiled 1958, provides that the commissioners' court has sole power to locate the courts in the rooms of the courthouse and further provides that, in the event the courthouse is inadequate, the court may provide offices in a convenient location in the county *site*. (Emphasis supplied.)

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

October 30, 1973

Honorable Pride Tompkins
Attorney
City of Cherokee
Colbert County
Post Office Box 512
Tuscumbia, Alabama 35674

Licenses — Municipalities — Taxes.

Where an ordinance expressly so provides, a public utility owned and operated by a municipality may be subject to privilege license taxes.

Opinion by Assistant Attorney General Whetstone.

Dear Mr. Tompkins:

Your request for an official opinion bearing date of June 28, 1973, is as follows:

"This law firm represents the City of Cherokee, Colbert County, Alabama, and a question has arisen which concerns Title 37, Section 745 of the Code of Alabama.

"The City of Sheffield operates the Sheffield Power Company and it has an office in Cherokee, Alabama. The City of Sheffield furnishes power to Cherokee, Alabama. Can the City of Cherokee impose a license tax upon this power company in the City of Cherokee and not exceed (3%) three per cent of the gross receipts of the business done by the utility in the municipality during the preceding year? (Title 37, Section 745 PUBLIC UTILITIES.)

"The City of Sheffield denies that the City of Cherokee can charge them up to three (3%) per cent of the gross receipts of the business done by the utility in the municipality. The City of Cherokee would appreciate an opinion concerning this matter at your earliest convenience."

A municipality is expressly given the power to impose a license tax on all businesses, occupations and professions which engage in or carry on a business within the municipality by Title 37, Section 735, Code of Alabama 1940.

If this taxing power delegated by the State is not limited, it includes all the taxing power possessed by the State which would also include the power of the State to tax municipalities. **Town of Hackleburg v. Northwest Gas District**, 277 Ala. 355, 170 So. 2d 792; **McQuillin Municipal Corporations**, 3rd Ed., Vol. 16, Section 44.97.

In the case of **Town of Hackleburg**, *supra*, the Supreme Court of Alabama interpreted Section 735, *supra*, as a plenary grant of authority from the State government to municipal governments and held that the Town of Hackleburg could levy a license tax on a gas district even

though the gas district was founded by several municipalities and constituted a public corporation. In the case of **Southeast Alabama Gas District v. City of Dothan**, 279 Ala. 667, 189 So. 2d 350, the Supreme Court reviewed the **Hackleburg** decision and decided it should not be disturbed.

Title 37, Section 745, Code of Alabama 1940, is a restriction upon the general grant of authority given to municipalities by the State under Section 735, *supra*. Section 745, *supra*, limits the maximum tax which can be imposed upon public utilities to three (3%) percent of the gross receipts of the business done by the utility in the municipality during the preceding year.

While the law is quite well established that a state has not taxed a municipality unless the intention to tax the municipality is clearly expressed, **City of Huntsville v. Madison County**, 166 Ala. 389, 52 So. 326, it is my opinion that this rule of interpretation does not apply to Section 735, *supra*, which does not attempt to levy a tax but is a general grant of taxing authority from the State to municipal corporation

In the present situation, the Sheffield Power Company is not a body corporate but is administered by a board which was set up by a municipal ordinance. The Sheffield Power Company, therefore, is an arm of the city and any tax which is imposed upon it will be imposed upon the City of Sheffield.

Since the City of Sheffield, through its Power Company, is engaged in the business of furnishing electricity to the City of Cherokee, it must be considered to be exercising its proprietary or business powers, and as to such business is governed by the same rules of law which are applicable to ordinary business corporations and, therefore, fall within the ambit of taxing authority granted to the City of Cherokee by the State under Sections 735 and 745, *supra*. **City of Decatur v. Parham**, 268 Ala. 585, 109 So. 2d 692.

The above premises considered, it is my opinion that the City of Cherokee has the authority to impose a three (3%) percent license tax on the gross receipts of the business done by the Sheffield Power Company, if the intention to tax municipal corporations is clearly expressed in the city ordinance which levies the tax.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

November 9, 1973

Honorable W. P. Farrar
Tax Collector
Russell County Courthouse
Phenix City, Alabama

Tax Assessor — Tax Collector — Counties — Russell County.

1. A county governing body may authorize payment of county funds to provide data processing services for county tax assessor and tax collector, on fee system, to extent that such services represent the use of machines, programming, personnel training and other items not involving costs of data processing labor.

2. Any contract with data processing firm must provide that said firm in its billing set out, as separate items, labor charges attributable to the tax assessor and labor charges attributable to the tax collector.

Opinion by Assistant Attorneys General Loeb and Teague.

Dear Mr. Farrar:

Reference is made to your request for an opinion from this office dated September 20, 1973, in which you pose the following question:

Where, by agreement between the tax assessor and collector and the county governing body, the tax assessments, tax abstract and tax receipts are, by contract, to be prepared by a data processing firm, what portion of the costs of said service is to be paid by the county and what portion is to be paid by the tax assessor and collector, who are paid on a percentage fee system. Said agreement is evidenced by action of the Russell County Commission at a term meeting of said Commission on July 5, 1973, recorded in Minute Book 8 at Page 344.

In view of the authority contained in Title 12, Section 123, and Title 51, Sections 35 and 36, Code of Alabama, 1940, Recompiled 1958, the county governing body is required to furnish to tax assessors and collectors, who operate on a fee basis, necessary books, stationery, printed forms, and other like equipment to be used in the proper conduct of their offices. To implement the duties imposed by the above cited statutes, the county governing body may authorize payment of county funds to provide data processing services to the extent that such services represent the use of machines, programming, personnel training, and other items not involving costs of data processing labor.

It is therefore imperative that any contract between you and the data processing firm provide for a breakdown as to what portion of the charges are for labor and what portion for use of machines, programming, etc. It would also be necessary for any billing, by the firm providing data processing services to set out, as separate items, labor charges attributable to the tax assessor and also those labor charges which would properly be attributable to the tax collector. Such labor charges, as set out in the billing, would then be payable by the tax assessor and the tax collector respectively.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

I N F O R M A L O P I N I O N S

During the period covered by this Quarterly Report of the Attorney General October 1, 1973 through December 31, 1973, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

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ABC BOARD			
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ABC Inspectors — Law Enforcement Officers	Henry Gray, III	Oct. 25	ABC Board
Wine Sales — License Tax	Henry Gray, III	Oct. 18	ABC Board
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AUDITOR			
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BUILDINGS			
Demolition Costs — Collection	O. L. Satterwhite	Oct. 16	25
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